

1976

## c 79 The Employees' Health and Safety Act, 1976

Ontario

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## CHAPTER 79

### An Act respecting Employees' Health and Safety

*Assented to December 16th, 1976*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-  
tation

- (a) "committee" means a joint health and safety committee;
- (b) "employer" includes a manager as defined in Part IX of *The Mining Act*;  
R.S.O. 1970,  
c. 274
- (c) "engineer" means an engineer as defined in Part IX of *The Mining Act*;
- (d) "health and safety representative" means a health and safety representative selected by employees he represents or by the trade union or trade unions representing such employees;
- (e) "inspector" means an inspector as defined in *The Industrial Safety Act, 1971*, or *The Construction Safety Act, 1973*, as the case may be;  
1971, c. 43  
1973, c. 47
- (f) "Minister" means the Minister of Labour;
- (g) "trade union" means a trade union as defined in *The Labour Relations Act* that has the status of exclusive bargaining agent under that Act in respect of any bargaining unit or units in any work place or any part or parts thereof;  
R.S.O. 1970,  
c. 232
- (h) "work place" means,
  - (i) an industrial establishment as defined in *The Industrial Safety Act, 1971*,

1973, c. 47

(ii) a project as defined in *The Construction Safety Act, 1973*, and

R.S.O. 1970,  
c. 274

(iii) a mine and a plant as defined in Part IX of *The Mining Act*.

Employee  
may refuse  
to work, etc.

2. Where an employee in a work place has reasonable cause to believe that a machine, device or thing is unsafe to use or operate because its use or operation is likely to endanger himself or another employee or a place in or about a work place is unsafe for him to work in, or the machine, device, thing or place is in contravention of *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973* or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be, the employee may refuse to use or operate the machine, device or thing, or work in the place.

1971, c. 43

1973, c. 47

R.S.O. 1970,  
c. 274Employee  
may refuse  
to report  
to employer

3.—(1) Where an employee in a work place refuses to use or operate a machine, device or thing or refuses to work in a place therein because he has reasonable cause to believe that the machine, device or thing is unsafe to use or operate because its use or operation is likely to endanger himself or another employee or the place is unsafe for him to work in, or the machine, device, thing or place is in contravention of *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973*, or Part IX of *The Mining Act* or any regulations thereunder, as the case may be, he shall forthwith report the circumstances of the matter to his employer or the person having control and direction over him who shall forthwith investigate the report in the presence of the employee and, if there is such, in the presence of either a health and safety representative, a committee member who represents employees, or a person authorized by the trade union that represents the employee.

Employee  
may continue  
to refuse to  
work, etc.

(2) Where the employer or the person having control and direction over the employee disputes the report or takes steps to make the machine, device, thing or place safe or comply with *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973*, or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be, and the employee has reasonable cause to believe that the machine, device or thing is or continues to be unsafe to use or operate because its use or operation is likely to endanger himself or another employee or the place is or continues to be unsafe for him to work in or the machine, device, thing or place is or continues to be in contravention of *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973*, or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be, he may continue to refuse to use or



operate the machine, device or thing, or work in the place unless a collective agreement binding the employee expressly provides otherwise.

(3) Where the employee continues to refuse to use or operate the machine, device or thing, or work in the place or having returned to work in compliance with the express provisions of a collective agreement binding the employee files a grievance concerning his right to continue to refuse to use or operate the machine, device or thing or work in the place, the employer or person having control and direction over the employee shall notify an appropriate inspector or an engineer, as the case may be, who shall investigate the matter in the presence of the employer or the person having control and direction over the employee, the employee and, if there is such, either a health and safety representative, a committee member who represents employees or a person authorized by the trade union that represents the employee.

Investigation  
by inspector  
or engineer

(4) The inspector or engineer shall, following his investigation, make a decision whether the machine, device or thing is unsafe for the employee to use or operate or the place is unsafe for the employee to work in or the machine, device, thing or place is in contravention of *The Industrial Safety Act, 1971*, *The Construction Safety Act, 1973* or Part IX of *The Mining Act*, or any regulations thereunder, as the case may be.

Decision  
by inspector  
or engineer

1971, c. 43  
1973, c. 47  
R.S.O. 1970,  
c. 274

4.—(1) The Minister may, by order in writing, require an employer to establish a joint health and safety committee or committees for a work place, or any part or parts thereof, and, in the order, may provide for the qualifications and the term of office of its members and its practice and procedures, and, from time to time, may give such directions as the Minister considers advisable concerning its functions.

Minister  
may make  
order

(2) In exercising the power conferred by subsection 1, the Minister shall consider,

What  
Minister  
shall consider

- (a) the nature of the work being done;
- (b) the number of employees engaged in the work;
- (c) the request of a group of the employees or the trade union or trade unions representing the employees in a work place;
- (d) the frequency of injury in doing work of that nature in the industry of which the employer is a part;

- (e) the existence of health and safety programs and procedures in the work place and the effectiveness thereof; and
- (f) such other matters as the Minister considers advisable.

Composition  
of committee

(3) A committee shall consist of such number of persons as the Minister may prescribe, of whom half shall be employees who do not exercise managerial functions, to be selected by the employees they are to represent or, where there is a trade union or trade unions representing such employees, by the trade union or trade unions.

Powers of  
committee

- (4) It is the function of a committee and it has power to,
- (a) identify situations that may be a source of danger or hazard to employees;
  - (b) make recommendations to the employer and employees for the improvement of the health and safety of employees;
  - (c) recommend the establishment, maintenance and monitoring of programs, measures and procedures respecting the health and safety of employees;
  - (d) obtain information from the employer or other persons respecting,
    - (i) the identification of potential or existing hazards of materials, processes or equipment, and
    - (ii) health and safety experience and work practices and standards in the same or similar industries;
  - (e) maintain and keep minutes and records of its proceedings and it shall make the same available for examination and review by an inspector or engineer.

Posting of  
names and  
work  
locations

(5) An employer shall post and keep posted the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of his employees.

Meetings  
of committee

(6) A committee shall meet during working hours at least four times a year and not more often than once a

month and may be required to meet by order of the Minister.

(7) A member of a committee is entitled to such time from his work as is necessary to attend meetings of the committee without deduction of the time so spent from his work time and without deduction from his wages for time so spent.

Entitlement to time from work

5.—(1) The Minister may, by order in writing, require an employer to cause the selection of one or more health and safety representatives for a work place, or any part or parts thereof, from among the employees employed at the work place who do not exercise managerial functions, and may from time to time give such directions as the Minister considers advisable concerning the functions of a health and safety representative.

Minister may make order

(2) The selection of a health and safety representative shall be made by the employees who do not exercise managerial functions whom the health and safety representative is to represent or, where there is a trade union or trade unions representing such employees, by the trade union or trade unions.

Selection of representative

(3) A health and safety representative may inspect the work place not more often than once a month or at such intervals as an inspector or engineer, as the case may be, may direct, and it is the duty of the employer and the employees to afford the health and safety representative such information and assistance as may be required for the purpose of carrying out the inspection.

Powers of representative

(4) A health and safety representative has power to identify situations that may be a source of danger or hazard to employees and to make recommendations or report his findings to the employer, employees, a trade union or trade unions representing employees and a joint health and safety committee, if any, for the improvement of the health and safety of workers.

Idem

(5) Where an accident occurs at a work place that causes serious injury or death to a person therein or thereat, a notice in writing of the occurrence shall be given forthwith by the employer to the health and safety representative, if any, and, the health and safety representative may inspect the place where the accident occurred and any machine, device or thing, and report his findings to the committee, if any, but nothing in this subsection affects the

Notice of accident, inspection by representative



1971, c. 43

1973, c. 47

R.S.O. 1970,  
c. 274

duties and responsibilities of an employer under sections 33, 34 and 35 of *The Industrial Safety Act, 1971*, sections 25 and 30 of *The Construction Safety Act, 1973*, and sections 612 and 613 of *The Mining Act*.

Entitlement  
to time  
from work

(6) A health and safety representative is entitled to take such time from his work as is necessary to carry out his duties under subsections 3 and 5 without deduction of time so spent from his work time and without deduction from his wages for time so spent.

Opportunity  
to accompany  
inspector or  
engineer

6. (1) Where an inspector exercises the powers conferred upon him under clause *a* of subsection 1 of section 8 of *The Industrial Safety Act, 1971*, or clause *a* of subsection 1 of section 6 of *The Construction Safety Act, 1973*, or an engineer exercises the powers conferred upon him under clause *b* of subsection 1 of section 618 of *The Mining Act*, the employer shall afford to a health and safety representative, if any, an employee authorized by a trade union or trade unions, if any, to represent it or them and, where there is no trade union an employee authorized by the employees to represent them, the opportunity to accompany the inspector or engineer during his physical inspection of a work place, or any part or parts thereof.

Consultation  
with  
employees

(2) Where there is no health and safety representative or authorized representative, the inspector or engineer shall endeavour to consult during his physical inspection with a reasonable number of the employees concerning matters of health and safety at their work.

Time deemed  
to be  
work time

(3) The time spent by a health and safety representative or an authorized representative in accompanying an inspector or engineer during his physical inspection shall be deemed to be work time.

Posting of  
copies of  
direction,  
order  
or report

7. Where an inspector gives a direction in writing under section 10 of *The Industrial Safety Act, 1971* or an order in writing under section 11 of *The Construction Safety Act, 1973* or an engineer gives a notice in writing under clause *a* of subsection 1 of section 618 of *The Mining Act* or an inspector or engineer issues a report of his inspection to an employer, the employer shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places where it is most likely to come to the attention of the employees and shall furnish a copy of such direction, order, notice or report to the health and safety representative and the committee, if any, and the inspector or engineer shall cause a copy thereof to be furnished to a person who has complained of a contravention of *The Industrial Safety Act, 1971*,

*The Construction Safety Act, 1973* or Part IX of *The Mining Act*, or any regulations thereunder.

1973, c. 47  
R.S.O. 1970,  
c. 274

8. (1) The Workmen's Compensation Board, upon the request of an employee or a trade union, shall send to the appropriate employer an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost workday cases, the number of lost workdays, the number of non-fatal cases that required medical aid without lost workdays, the number of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Summary  
to be  
furnished

(2) Upon receipt of the annual summary, the employer shall forthwith deliver a copy thereof to the committee, if any, and to the trade union or trade unions representing the employee, and, where there is no trade union, shall cause a copy thereof to be posted in a conspicuous place or places where it is most likely to come to the attention of the employees.

Delivery  
and posting  
of copy of  
summary

9.—(1) No employer or person acting on behalf of an employer shall,

No  
discipline,  
dismissal,  
etc., by  
employer

(a) dismiss or threaten to dismiss an employee;

(b) discipline or suspend or threaten to discipline or suspend an employee;

(c) impose any penalty upon an employee; or

(d) intimidate or coerce an employee,

because the employee has acted in compliance with this Act.

(2) Where an employee complains that an employer has contravened subsection 1, the employee may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Ontario Labour Relations Board in which case any regulations governing the practice and procedure of the Board apply *mutatis mutandis* to the complaint.

Employee  
may file  
complaint  
or have  
matter  
arbitrated

(3) The Ontario Labour Relations Board may inquire into any complaint filed under subsection 2, and section 79 of *The Labour Relations Act*, except subsection 4a, applies *mutatis mutandis* as if such section, except subsection 4a, were enacted in and forms part of this Act.

Inquiry into  
complaint  
R.S.O. 1970,  
c. 232



Application  
of R.S.O.  
1970, c. 232

(4) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, sections 91, 92, 95, 97 and 98 of *The Labour Relations Act* apply *mutatis mutandis*.

Burden  
of proof

(5) On an inquiry by the Ontario Labour Relations Board into a complaint filed under subsection 2, the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection 1 lies upon the employer or person acting on behalf of the employer.

Offence

10. Every employer who fails to comply with an order made under subsection 1 of section 4 or subsection 1 of section 5 or fails to comply with a provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$10,000, or to imprisonment for a term of not more than twelve months, or to both.

Act  
prevails

11. Where there is a conflict between the provisions of this Act and the provisions of any general or special Act, the provisions of this Act prevail.

Assignment  
and transfer  
to Minister  
R.S.O. 1970,  
c. 274

12.—(1) The administration of Part IX of *The Mining Act*, except section 616, is assigned and transferred to the Minister of Labour and a reference in that Part, except in section 616, to the Minister, the Deputy Minister or the Ministry shall be deemed to be a reference to the Minister of Labour, the Deputy Minister of Labour or the Ministry of Labour, as the case may be.

Reference  
to Deputy  
Minister

(2) The reference in subsection 3 of section 632 of *The Mining Act* to the Deputy Minister shall be deemed to be a reference to the Deputy Minister of Labour.

Assignment  
and transfer  
to Minister  
R.S.O. 1970,  
c. 438

13. The administration of *The Silicosis Act* is assigned and transferred to the Minister of Labour and a reference in that Act and the regulations thereunder to the Director or to the Minister shall be deemed to be a reference to the Chief of the Industrial Chest Disease Service of the Ministry of Labour or to the Minister of Labour, as the case may be.

Commence-  
ment

14.—(1) This Act, except section 8, comes into force on the day it receives Royal Assent.

Idem

(2) Section 8 comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

15. This Act may be cited as *The Employees' Health and Safety Act, 1976*.